



Annual Report 2007¹

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0. Origins and Tasks of the Litigation Association

The *Litigation Association of NGOs against Discrimination* was founded in spring 2004 during the time when Parliament discussed the transposition of the anti-discrimination directives (Directives 2000/43/EC and 2000/78/EC).

Three non-governmental organisations (NGOs) were the driving force and funding members – *ZARA – Zivilcourage und Antirassismus-Arbeit* [ZARA – Civil Courage and Anti-Racism Work], *BIZEPS – Zentrum für Selbstbestimmtes Leben* [BIZEPS – Independent Living Center Vienna], and *Homosexuelle Initiative Wien* [HOSI Vienna – Homosexual Initiative Vienna].

The Litigation Association aims to fulfil the following tasks:

- conduct strategic litigation for the purpose of enforcing anti-discrimination law,
- document the numerous pieces of legislation at the level of the Federation and the federal provinces (*Länder*) transposing the anti-discrimination directives,
- document and comment on case law passed on the basis of these acts,
- offer trainings in anti-discrimination law to the members of the Litigation Association,
- carry out public relations work (information for various target groups, media requests, web site, participation in events) and
- contribute to further legal developments (statements on (proposed) legislation).

From the very beginning the Litigation Association has been designed to provide a service to its members (only NGOs can be full members) and NOT to replace them or compete with them. The Litigation Association does not engage in politics of representing victim groups. I.e., it does not speak out in the place of people with disabilities. It rather goes public with legal expertise and tries to make anti-discrimination law accessible in a way that everybody can understand it.

1. Members and team of the Litigation Association

1.1 Members

Since the end of the year 2007, the Litigation Association consists of eight member organisations:

- *BIM-FV* - Ludwig Boltzmann Institut für Menschenrechte – Forschungsverein [Ludwig Boltzmann Institute of Human Rights – Research Association]
- *BIZEPS* – Zentrum für Selbstbestimmtes Leben [BIZEPS – Independent Living Center Vienna]
- *Helping Hands Graz*
- *HOSI Wien* – Homosexuelle Initiative Wien [Homosexual Initiative Vienna]
- *ÖGLB* - Österreichischer Gehörlosenbund [Austrian National Association of the Deaf]



- *Selbstbestimmt Leben Innsbruck*
[Independent Living Innsbruck]
- *VÖJ - Verein Österreichischer Juristinnen*
[Association of Austrian Female Lawyers]
- *ZARA – Zivilcourage und Antirassismus-Arbeit*
[ZARA – Civil Courage and Anti-Racism Work]

The Litigation Association has had talks with a number of additional associations representing women, ethnic groups, people with disabilities, and the elderly. Additional members are expected to join in 2008.

1.2 Team

The Litigation Association employs two lawyers part time. Above that, volunteering is the foundation of the Litigation Association.

These unsalaried activities include:

- the regular work of the members of the board and the litigation committee deciding on support in legal procedures,
- two volunteers authoring editions of the newsletter and carrying out legal research,
- the contribution to public relations etc. (workshops....) by counsellors of member organisations
- the expertise of representatives of non-governmental organisations before the Equal Treatment Commission.

2. Activities

This documentation of activities of the *Litigation Association* is structured along the following criteria:

- Counselling and legal representation,
- information,
- trainings,
- documentation of and commenting on (case) law,
- public relations and networking,
- further legal education.

2.1 Counselling and legal representation

The *Litigation Association* counsels its members in all questions regarding the applicability of equality and anti-discrimination law. Furthermore, it also answers an increasing number of telephone- and e-mail information requests from individuals, associations and companies.

The following questions are at the centre of these activities:



- Does a certain situation constitute discrimination? Which possibilities of legal protection are there?
- What are the prospects of filing a claim?
- If litigation is no longer possible (because the time for commencing action has expired) or associated with a particularly high risk: Is an application with the Equal Treatment Commission meaningful?

During the year 2007, the *Litigation Association* has counselled 45 persons² wishing to get their right³; either directly or in cooperation with its members. In three cases the *Litigation Association* has taken on legal representation in court, one of the cases was settled amicably, one claim was dismissed, one case is still pending before the court of first instance. Furthermore, a number of cases dating back to previous years have been continued (court cases, acting as expert before the Equal Treatment Commission).

2.2 Information

Besides counselling in individual cases aiming at the direct enforcement of rights, there was a multitude of inquiries on the implementation of the anti-discrimination directives.

Four groups can be distinguished:

- **Inquiries by individuals:** Often, people turn to the *Litigation Association* who have found out about it themselves or have been referred to it. Whenever possible, the *Litigation Association* refers them to its member organisations for initial information. In this context, gaps in the network of public and private counselling organisations become evident in geographical as well as personal respect. Outside the provincial capitals, there are few organisations offering personal counselling on issues of discrimination. Thematically it stands out that transgender persons are often affected by discrimination but only a few offers of counselling for them exist.
- **Inquiries by the media:** There often is an interest in interviews with individuals that suffered discrimination and got their right. In most cases, the *Litigation Association* advises clients against such interviews, as it is difficult for many people to deal with great public interest (being recognised and approached in public space and by acquaintances; media interest which does not respect privacy). Only rarely did extended inquiries go beyond individual cases (as for example the eight part FM4-report on the Year of Equal Opportunities on all grounds of discrimination in December).

²Among them 21 women, 22 men, 2 counselling contacts concerned institutions where discrimination of several persons was supposed to have occurred.

³It has turned out to be more meaningful and more informative to distinguish between counselling and information. Counselling aims at concrete enforcement of rights, whereas information regards abstract legal questions, contact persons, etc. This new way of counting yields a number of counsellings that is below that of the previous year. If counselling and information are both taken into account, the resulting picture is comparable to the previous year.



- **Inquiries by researchers and for the purpose of education:** Many inquiries were made for reason of academic studies. The *Litigation Association* was consulted – besides the reports on its own activities in counselling and representation – to get initial orientation about the many public institutions at the level of the Federation and the federal provinces as well as relevant NGOs active in the field. Besides that, there is a growing number of inquiries by students drafting a Master’s thesis, doctoral dissertation or other final academic assignment on discrimination.
- **Inquiries by organisations active in the field:** Also the numerous public equal treatment and anti-discrimination bodies enquired about decisions and experiences in relation with the various laws. Often they were looking for other relevant organisations active in the field after having been approached with questions outside their own remit.

2.3 Trainings

One of the main tasks of the *Litigation Association* consists in training its member associations and their (mostly unsalaried) staff and activists. They should acquire the capability of conducting competent initial counsellings and out of court settlement negotiations. It is in particular the organisations *BIZEPS*, *Independent Living Innsbruck* and the *Austrian National Association of the Deaf* that attach a very high value to this principle of peer counselling. Above that, the team members of the *Litigation Association* are also available for trainings of other NGOs within in the limits of available temporal resources.

Among others, the following trainings took place:

- on 17. March on the Disability Equality Package, at amnesty international,
- on 15. September for the persons responsible for discrimination issues within the Austrian National Association of the Deaf,
- on 12. October for NGO- and trade union staff, and
- on 15. December in the framework of the *ZARA*-training course for anti-racism work.



2.4 Documentation of and commenting on (case) law

The *Litigation Association* provides the current law of the Federation and the *Länder* for download from its website⁴. Besides, the most important decisions by courts and the Equal Treatment Commission are provided with comments⁵. For the future we plan to also document and comment on the decisions by Commissions of the *Länder*.

Furthermore a data base for documenting the results of settlements by the *Bundessozialamt* (federal office for social affairs and disability) has been developed. Currently, the settlements of the past two years are being entered. This application will go online after an internal test phase during the first half of the year 2008.

Experience so far shows that this collection of legal texts, which is unique in Austria, is accessed highly frequently and the legal texts are downloaded very often. Above that, there also are a growing number of inquiries regarding which law is applicable to a specific situation. It is in particular these inquiries that substantiate the need for a body with an overview of all the acts implementing the equality and anti-discrimination directives.

2.5 Public relations and networking

The website of the *Litigation Association* (www.klagsverband.at) is the primary component of its public relations work. Furthermore, there were talks and presentations, the participation in conferences and press conferences.

At national level, the *Litigation Association* is networking with public bodies, social partner organisations and NGOs. The *Litigation Association* is also interested in international contacts, in particular with similar NGOs. However, at the time being it seems that the *Litigation Association* is unique in the EU area in its quality as an umbrella organisation of NGOs covering all grounds of discrimination.

2.5.1 Examples of public relations work

Besides reporting on the work of the Litigation Association (see 2.1, 2.5 and 2.6), public relations work included the **documentation of and commenting on Austrian (case) law** (see 2.4) and reporting on **anti-discrimination policies and further legal development** at national, EU- and international level as well as announcements of upcoming relevant events and reviews. The **website** (www.klagsverband.at) is the central medium of these publications. The *Litigation Association* is a BIZEPS-media partner⁶ and provides its articles to the other 20 participant organisations. Thus, the news items are spread more widely. In 2007, the Litigation Association authored about 110 news articles, a large part of which was taken over

⁴ <http://www.klagsverband.at/recht.php>

⁵ <http://www.klagsverband.at/rechtsp.php>

⁶ <http://www.bizeps.or.at/media/partner.php>



by other websites. On the other hand, the Litigation Association took over about 30 news texts from other sources.

One particular focus is on court proceedings before German⁷, French⁸, Swedish⁹ and Belgian¹⁰ courts and on judgements by the European Court of Justice (ECJ)¹¹ and the European Court of Human Rights (ECHR)¹². Thus a comparison between the implementation of the anti-discrimination directives across different member states is possible. Central questions that are hotly debated can therefore be better assessed and examples of good practice are documented. In particular the following issues and questions have been addressed during the reporting period:

- the hierarchy between different grounds of discrimination,
- the amount of damages,
- sanctions in penal and civil law,
- practical problems in the application of anti-discrimination law.

Taking into account the jurisdiction of the ECHR and the ECJ permits a perspective on the possible long term development of anti-discrimination law.

Among other activities, *Litigation Association* staff gave **talks and workshops** or participated in panel discussion on anti-discrimination law:

- on 23. May, at a panel discussion of the University of Linz „Erfolgsrezept oder Gewissensberuhigung – Die neuen Diskriminierungstatbestände: Die Antirassismus-Richtlinie“ (Recipe for success or soothing a bad conscience – the new discrimination offences: the anti-racism directive),
- on 13. June, at REHA LIFE,
- on 3. October, in Roganska Slatina (Slovenia),
- on 5. November ,at an event in the framework of the Year of Equal Opportunities at the Vienna *Museumsquartier* and
- on 14. November, at the European Fundamental Rights Agency Diversity Day.

Furthermore, the *Litigation Association* participated in the concluding event of the European Year of Equal Opportunities in Lisbon on 19. and 20. November.

⁷ <http://www.klagsverband.at/news.php?nr=8021>

⁸ <http://www.klagsverband.at/news.php?nr=8027>

⁹ <http://www.klagsverband.at/news.php?nr=8160>

¹⁰ <http://www.klagsverband.at/news.php?nr=8246>

¹¹ <http://www.klagsverband.at/news.php?nr=8184>; <http://www.klagsverband.at/news.php?nr=7821>

¹² <http://www.klagsverband.at/news.php?nr=8466>; <http://www.klagsverband.at/news.php?nr=7918>



2.6 Further legal education

The fight against discrimination in Austria still is in its infancy. The legal framework continues to be inconsistent. Enforcing existing rights and using mechanisms of enforcement does not run smoothly. The *Litigation Association* has formulated suggestions for developing and enforcing the existing legal framework.

2.6.1 Statements

The *Litigation Association* drafted statements on legislation for the transposition of directive 2004/113/EC¹³ into Austrian law. This concerned the proposed draft regarding the Vienna Anti-Discrimination Act¹⁴, the Lower Austrian Anti-Discrimination Act¹⁵ and the Equal Treatment Act¹⁶. It is a common feature of all these acts that the existing hierarchy of different protection levels for different grounds of discrimination has not been abolished (Lower Austria and Vienna Anti-Discrimination Act) or even expanded (Equal Treatment Act).

Another statement regarded the 2007 amendment of the Civil Procedures Act 2007¹⁷, which included a proposal for making mass proceedings easier. The *Litigation Association* suggested adding special provisions for discrimination cases.

Finally, the *Litigation Association* also gave its view on the draft amendment of the Vienna public services law 2007¹⁸.

Furthermore, the *Litigation Association* issued statements on the European Fundamental Rights Agency's developing of a strategy for the cooperation with civil society and a shadow report to the UN human rights report on Austria.

2.6.2 Complaints

The Federal Law on the Equal Treatment Commission and the Ombud Office for Equal Treatment foresees that persons filing an application with the Equal Treatment Commission (ETC) may demand before the ETC's Senates that an NGO be called in as an expert with consultative status. The Senates of the ETC curtail this right and mostly reduce it to questioning the expert. Furthermore, proceedings on average last far longer than a year and the results of the investigations are in contrast with standards of procedural law like the rules governing the investigation of evidence. As there is no legal remedy available against the

¹³ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

¹⁴ <http://www.klagsverband.at/news.php?nr=8308>

¹⁵ <http://www.klagsverband.at/news.php?nr=8309>

¹⁶ <http://www.klagsverband.at/news.php?nr=8375>

¹⁷ <http://www.klagsverband.at/news.php?nr=8047>

¹⁸ <http://www.klagsverband.at/news.php?nr=8091>



findings of the ETC and the Senates did not react to complaints produced orally, the Litigation Association has filed a complaint with the Austrian Ombudsman Board¹⁹.

3. Success

As a lot of positive feedback confirms, the *Litigation Association* has succeeded in providing reliable information on the developments in the area of anti-discrimination legislation in easily accessible form, offering an unrivalled overview of the prolific body of law and competent governmental bodies across Austria.

In 2007, we succeeded in winning one court case²⁰ and achieving one amicable settlement²¹. One case was lost for lack of evidence²².

4. Challenges

The application of anti-discrimination law still proves to be difficult. Besides the shortcomings in content (hierarchy of discrimination grounds, gaps in procedural provisions), especially proceedings before the Senates of the Equal Treatment Commission as well as court proceedings pose particular problems.

The Senates of the Equal Treatment Commission continue to refuse involving NGOs in the procedures as experts with consultative status upon the demand of applicants. Furthermore, proceedings regularly last longer than a year and the investigation of evidence does not satisfy legal requirements. For lack of legal remedies against the decisions of the ETC, these issues are currently investigated by the Austrian Ombudsman Board following a joint complaint by the *Litigation Association* and ZARA. (see 2.6.2)

Regarding court proceedings, it is first and foremost the insufficient rights of NGOs and the low amounts of damages that must be mentioned. In particular there is a lack of a possibility for class action in order to proceed against cases of discrimination concerning several persons like e.g. excluding entire groups from services, etc. The courts lack points of orientation for making damages “effective, proportionate and deterrent” because of a lack of legal guidelines. This gap is slowly closing through relevant contributions to legal literature.²³

¹⁹ <http://www.klagsverband.at/news.php?nr=8310>

²⁰ <http://www.klagsverband.at/news.php?nr=7841>

²¹ <http://www.klagsverband.at/news.php?nr=7768>

²² <http://www.klagsverband.at/news.php?nr=8499>

²³ See: *Gahleitner*, Der Schutz vor Belästigung im Arbeitsverhältnis, ZAS 2007, 148; *Majoros*, Richtlinienkonforme Bemessung des ideellen Schadens im Gleichbehandlungsgesetz, DRdA 2007, 515



5. Outlook on 2008

In addition to the continuous counselling, training, information and public relations work, the following activities will be emphasised in 2008:

- Contributions to the evaluation of the Disability Equality Package,
- expanding the range of information offered on the website,
- expanding litigation activities,
- stepping up public relations work,
- offering trainings (in particular on the amended Equal Treatment Act and the Disability Equality Package).